IN THE UNITED STATES DISTRICT COURT FOR MARYLAND

STEVEN A. SILVERS	*	
Plaintiff	*	U.S. District Court for the Southern District of Florida
v.	*	West Palm Beach
GOOGLE, INC.	*	
Defendant	*	Case # 05-80387-CIV-RYSKAMP/VITUNAC

* * * * * * * * * * * * *

MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER

Lindsey Miller, movant, through undersigned counsel, Michael C. Worsham, Esq., moves to quash the subpoena putatively served on her on in the above Florida federal lawsuit by Stelor Productions, Inc., Tuesday October 3, 2006 by Stelor Productions, Inc. (Stelor). Miller has had insufficient notice or time, and Stelor is attempting to use the judicial process improperly, and states:

BACKGROUND

1. On June 1, 2006, Stelor Productions, Inc., movant Miller's former employer, sued Miller in a Complaint filed in the Circuit Court for Montgomery County, Maryland, *Stelor Productions, LLC v. Lindsey R. Miller*, Case # 272024-V.
2. Miller moved for a more definite statement, because the Complaint , *inter alia*, consisted of form pleadings which alleged civil conspiracy even though Miller was the only defendant in the suit, did not even have Miller's correct address despite Miller not having moved since being employed by Stelor earlier this year, and because the Complaint was prepared by an employee of Stelor, rather than Stelor's counsel, and gave Stelor's business address as the address of Stelor's counsel.
3. On September 19, 2006, undersigned counsel entered an appearance for Miller, and at a hearing, Judge DeLawrence Beard orally granted Miller's motion for a more definitive statement, requiring Stelor to file an amended Complaint with more detail by Oct. 16, 2006.
4. On September 29, 2006 the U.S. District Court for Florida, Judge Kenneth L. Ryskamp, issued an Order Denying Google Inc.'s Unopposed Motion to Alter the Scheduling Order Relating to Discovery and Dispositive Motions Only, a copy of which is attached herein. This Order set a depositions deadline for discovery in the FL case of October 5, 2006. Miller

MICHAEL C. WORSHAM, Esq.
1916 Cosner Road
Forest Hill, Maryland, 21050-2210
(410) 557-6192
Fax: (410) 510-1870
michael@worshamlaw.com

Dockets.Justia.com

is not a party in the Florida federal case.

5. Stelor nonetheless served Miller on Oct. 3, 2006 with a subpoena, attached herein, commanding her to appear on October 10, 2006 at 3 PM, which is after the deadline set by the FL court's September 29, 2006 Order. The Proof of service page was also served but has been omitted.

6. On October 5, 2006 the federal court in FL issued an Omnibus Order, attached herein, which apparently reversed in part its September 29, 2006 Order, and extended discovery for the parties in the FL case until October 11, 2006.

7. On Friday Oct. 6, 2006, counsel tried to resolve the dispute with Stelor's counsel, prior to even seeing the subpoena and attachment served on Miller, but was unable to do so.

8. Undersigned counsel did not obtain a copy of the subpoena and attachment served on Miller until Saturday October 7, 2006, including an attachment for production of many documents.

9. On Monday October 9, 2006, after hearing no response from Stelor's counsel, movant's counsel sent a letter expressing objections to the subpoena, and advising that the instant motion would be filed, and that Miller would be advised not to appear for the deposition. A copy of that letter is attached herein.

10. On Monday October 9, 2006 Stelor's counsel acknowledged receipt of undersigned counsel's October 9, 2006 objection letter, but refused to withdraw the subpoena.

ARGUMENT

Federal Rule of Civil Procedure (FRCP) 45(c) contains protections for non-parties served with subpoenas. The first level of protection imposes an obligation on the party serving the subpoena who "shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." and that the court ". . . shall enforce this duty." FRCP 45(c)(1).

FRCP 45(c)(2)(B) provides that a person served with a subpoena may "serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued."

MICHAEL C. WORSHAM, Esq.
1916 Cosner Road
Forest Hill, Maryland, 21050-2210
(410) 557-6192
Fax: (410) 510-1870
michael@worshamlaw.com

FRCP(c)(3)(A) provides that on "timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it (i) fails to allow reasonable time for compliance; . . . (iv) subjects a person to undue burden."

Stelor's Subpoena Is Deficient and Lacks Authority

Stelor's subpoena is deficient because (1) it was served without FL court authority, at a time when Miller's appearance was required on a date past the Oct. 5, 2006 deadline set by the FL federal court, and (2) the FL federal court's Oct. 5, 2006 Omnibus Order did not change this deadline with respect to non-parties to the FL federal suit such as Miller, and (3) Stelor's subpoena was signed by "Stelor Production, Inc." rather than Stelor Production, LLC." and movant does not know if the former even exists, or whether it is the actual party to the FL federal case.

Stelor's Subpoena Fails to Allow Reasonable Time For Compliance

Miller and her counsel have little knowledge about what the FL federal case is about, the issues and claims therein, or if or whether Miller's knowledge has any relevance to those issues. Stelor has some kind of cross-claim in the federal case, but counsel does not know what the claims are amongst the parties in that suit, and has not seen a copy of the Complaint or cross-Complaints.

Also, ¶ 9 of Attachment A to the subpoena references yet another Florida suit, Case 05-18033 CA 03 (11th Judicial Cir. for Miami- Dade County). Counsel is not familiar with this suit either. Simply put, Miller's counsel is not in a position to reasonably counsel and prepare Miller for a deposition. It is also not clear why Miller is even being deposed.

This would true even without the key added factor that Stelor has sued Miller in Maryland, in what is meritless suit against Miller, a former secretary for Stelor.[1] Miller needs to take into consideration that Stelor would undoubtedly use her FL court deposition testimony in the MD state

[1] As noted Stelor's suit included a civil conspiracy claim, which is impossible when Miller is the only defendant. This and the suit's other form allegations, found legally deficient by the Circuit Court, make it fairly clear the Complaint was not prepared by Stelor's counsel, who even failed to put his own address on the Complaint. The Maryland Complaint rather strangely identified 14701 Mockingbird Drive, Darnestown, MD 20874 as the address of Stelor's counsel. This address is actually the home of one of the officers of Stelor, and not the office address of Stelor's counsel

MICHAEL C. WORSHAM, Esq.
1916 Cosner Road
Forest Hill, Maryland, 21050-2210
(410) 557-6192
Fax: (410) 510-1870
michael@worshamlaw.com

court suit, which as noted, was found to be deficient, and has yet to be amended. Miller assets that Stelor intends to use her FL court deposition testimony to 'gin up' the allegations found legally deficient by the Circuit Court for Montgomery County.

Stelor's tardiness is of their own making. The FL federal suit is scheduled for trial in December 2006, and thus must have been going on for some time. Stelor should have served Miller a long time ago, and certainly up against or past court deadlines. Stelor is using the process of the state court in MD and the federal court in FL for whichever purpose it suits Stelor: using the FL suit to gain discovery for its MD suit found deficient, and using the MD suit which lacks merit to burden or harass potential witnesses in the FL suit.

The above assertion is based on the additional fact that on June 1, 2006 Stelor filed a second suit in the same Montgomery County Circuit Court against four additional persons, *Stelor Productions, LLC v. Steven A. Silvers*, Case # 272023-V. This suit makes the same generic form allegations, including civil conspiracy, as Stelor's suit against Miller had. Just like Stelor's suit against Miller, Stelor's second Maryland suit against Silvers and three others was also found to be deficient by Circuit Court Judge Michael Mason at a hearing on October 4, 2006. Undersigned entered his appearance that day and represents the four defendants. The defendants' Motion for a more definite statement was granted, requiring Stelor to amend the Complaint in its second Maryland suit by November 3, 2006.

Stelor has been attempting to serve the four defendants in its second Maryland suit with deposition subpoenas in the Florida federal suit as well. None of these defendants have been served yet, but a motion similar to the instant motion may arise in the future. Stelor has results in improper tactics to attempt to intimidate these persons to appear, including threatening contempt of court to coerce receipt of the subpoena. A sample is attached herein, copies of notes left by Stelor's server at the house of Paul Worsham, one of the four defendants in Stelor's second Maryland lawsuit.

Regarding Miller, she has a right to have an attorney present during her deposition. Under the circumstances, Stelor's subpoena did not "allow reasonable time for compliance" as FRCP 45(c)(3)(A) requires. Accordingly, the court should quash the subpoena.

MICHAEL C. WORSHAM, Esq.
1916 Cosner Road
Forest Hill, Maryland, 21050-2210
(410) 557-6192
Fax: (410) 510-1870
michael@worshamlaw.com

Stelor's Subpoena Requires Documents Unrelated to the Florida case

or which invade attorney-client privilege

Although Miller does not know the details of the FL federal case. However, she has no idea who or what Café Press is, an entity identified in ¶¶ 5 and 7 of Attachment A to Stelor's subpoena. It appears Stelor is fishing around. Miller also objects to the request for all communications and correspondence and documents between Miller and/or provided by "Steven Silvers, including his attorneys, agents or representatives." *Id.* at ¶ 3 and ¶ 4. Undersigned represents both Miller and Silvers in the Maryland suits, and these requests invades attorney-client privilege.

WHEREFORE Lindsey Miller requests that the Court quash Stelor's subpoena, and protect Miller from having to produce documents as identified above, including in any amended subpoena that Stelor might attempt to serve. A proposed Order is attached.

Respectfully submitted,

Michael C. Worsham

Michael C. Worsham, Esq.
1916 Cosner Road
Forest Hill, Maryland 21050
410-557-6192

Attorney for Lindsey Miller

October 10, 2006

CERTIFICATE OF SERVICE

I certify on October 10, 2006 a copy of this Motion to Quash was served on:

S. Sturgeon, Jr., Esq.
1116 Hurdle Hill Drive
Potomac, Maryland 20854-2526
(301) 913-9291
By fax only to : (202) 478-0786

Kevin C. Kaplan, Esq.
Burlington, Schwiep, Kaplan & Blonsky, PA
(W) (305)858-2900, ext. 16
(C) (305) 725-2740
By fax only to: (305) 792-4343

/s/

Michael C. Worsham, Esq.

MICHAEL C. WORSHAM, Esq.
1916 Cosner Road
Forest Hill, Maryland, 21050-2210
(410) 557-6192
Fax: (410) 510-1870
michael@worshamlaw.com